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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7672 of 2007

Avinash Shivlal Sarwade ...Petitioner

V/s.

The Dean,
Chatrapati Shivaji Maharaj Sarwopchar
Rugnalaya, Solapur. ...Respondent

Smt. Seema Sarnaik, Advocate for the Petitioner
Mr. S.K.Chinlikar, AGP for the State

CORAM : B.H.MARLAPALLE,J.
DATED : 29th November, 2007

P.C.

Heard Mrs. Sarnaik, the Learned Counsel for the Petitioner who was one of the casuals/temporaries engaged by the Respondents which is a State Government Establishment. He had filed Comp(ULP)No. 88/2001 under items 6 and 9 of Schedule IV of the MRTU & PULP Act,1971 and claimed benefit of permanency. By way of inter-locutory order, the Industrial Court had directed that he should not be discontinued without following the due process of law. By the impugned Judgement and Order dated 22-8-2007 the complaint came to be dismissed and mainly by relying upon the Constitution Bench decision in the case of **Secretary, state of Karnataka and ors. V/s. Umadevi and other reported in AIR 2006 S.C. 1806.** The Industrial Court also relied upon an earlier

decision of the Apex Court in the case of **Executive Engineer, Zilla Parishad V/s. Digambar & other, 2004 (8) SCC 262.**

2. Though the point of illegal termination from service was sought to be agitated by amending the complaint, the Industrial Court in the impugned order held that the grievance of termination of service illegally or contrary to the orders passed by the Court from time to time was required to be agitated before the Labour Court. Mrs. Sarnaik invited my attention to an earlier order dated 23-11-1993 passed in OA no. 879/1993 by the Division Bench of Maharashtra Administrative Tribunal. While disposing of the said application it was directed that the Petitioners therein shall be continued in service in the post held by them until they are replaced by candidate from the surplus staff or the candidate duly selected by the Selection Committee. The name of the Petitioner appears at sr. no. 51 in the said OA no. 879/1993 disposed by the Maharashtra Administrative Tribunal. Mrs. Sarnaik, therefore, submit that the order passed by the Industrial Court during the pendency of the complaint was also contrary to the order passed by the Maharashtra Administrative Tribunal on 23-11-1993 and a Contempt Petition in that regard has been moved before the

Maharashtra Administrative Tribunal.

3. Having regard to the facts of this case and settled position on the issue of permanency in the Government Department, the issue of permanency has been rightly discarded by the Learned Member of the Industrial Court and at the sametime the Petitioner has a right to agitate the issue of termination of service during the pendency of the complaint. He may approach the Maharashtra Administrative Tribunal or the Labour Court and if such an application/complaint is moved within a period of one month from today, it is directed that the same shall be decided on its own merits.

4. Save and except the above directions, the Petition stands rejected.

[B.H.MARLAPALLE,J.]